IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

RP.No. 837 of 2006(E)

(S.A. 819 OF 1995)

: PETITIONERS/RESPONDENTS:
---

1. SIVANANDA MENON, AGED 70,
S/O. GOVINDA PILLAI, MAYA BHAVAN,
ULLAYAMPILLY HOUSE, PERUMPADANNA MURI,
PARAVOOR.

2. ANANDAVALLI AMMA, AGED 67,
W/O.SIVANANDA MENON, ULLAYAMPILLY HOUSE,
PERUMPADANNA MURI, PARAVOOR.

3. THARAKERSWARAN, AGED 39,
S/O. SIVANANDA MENON, ULLAYAMPILLY HOUSE,
PERUMPADANNA MURI, PARAVOOR.

BY ADV. SRI.T.K.VENUGOPALAN

RESPONDENT: APPELLANT:

P. GOPALAKRISHNA PILLAI,
AGED 73, S/O. KARTHYANI AMMA,
RESIDING AT GOPASREE, KORAKKATT THERUVU,
PARAVUR, PARAVOOTHARA MURI.

BY ADV. SMT.M.A.SOHARA.

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 09/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

R.P.No.837 OF 2006
in
S.A.No. 819 OF 1995

Dt. APRIL 9, 2007

ORDER

This is a review application filed by the respondents in the second appeal to review my judgment dt. 18th August, 2006. Brief fact necessary for the disposal of the review petition are given below:-

Two plaintiffs jointly instituted a suit for an injunction against the respondents and the trial court granted a decree in favour of the plaintiffs which was reversed by the appellate court and the suit was dismissed. A second appeal was preferred and by the above said judgment I granted a decree in favour of the plaintiff. It is to review that judgment the present review petition is filed. It is unfortunate that the matters which should have been brought before this court at the time of arguing the second appeal was not brought to the notice of this court. Here the precise point raised for review is that the court has not taken into consideration all the materials relevant and necessary for the proper disposal of the second appeal. When the matter was decreed by the trial court and an appeal was preferred before the Subordinate Judge's Court, Paravur, the second plaintiff in the suit was arrayed as the 2nd respondent and during the pendency of the said appeal before the said court, an application I.A.No.6299-A of 1993 was filed by the advocate of respondents Nos.2 and 4, namely Adv. Sri V.Ramachandra Iyer, for the reception of a document. The original of the document is now shown to me by the learned counsel for the review petitioners.

The said document is to the effect that the 2nd plaintiff is transferring his right over the property in favour of the 3rd defendant in the case or, in other words, if the sale deed executed by the 2nd defendant in favour of the 3rd defendant is correct, then he will become a co-owner of the property and certainly an order of injunction cannot be granted against a co-owner. Unfortunately, the Subordinate Judge's Court did not pass any order on the I.A, and though the original document was produced, it was not pressed into service and it was taken back. Under Order 47 Rule 1 of the Code of Civil Procedure a review application can be entertained where there is some mistake apparent on the face of the record or for any other sufficient reason which the court finds sufficient for review of its judgment. In this case, though the name of the 2nd plaintiff is shown as 2nd appellant at the time of preparation of the memorandum of appeal, at the time of institution of the appeal, his name has been scored off and there is absolutely no whisper about the non-junction of the 2nd plaintiff in the appeal. So, there is absolutely no explanation for the non-joinder of the 2nd plaintiff in the memorandum of appeal. If the document alleged to be executed by the 2nd plaintiff in favour of the 3rd defendant is true and valid, then it goes without saying that the 3rd defendant will become a co-owner of the property along with the 1st plaintiff and in a suit for injunction, an injunction cannot be granted against a co-owner. So, it is a matter which fundamentally goes into the root of the case which has not been considered by this court. So, I feel, in the interests of justice and in view of the power conferred under Order 47 Rule 1 of the Code of Civil

Procedure, it is only just and proper to review the judgment passed by me on 18.8.2006. The merits and demerits of the validity or otherwise of the document sought to be placed by the defendants in the case can be considered only at the time of a detailed hearing of the case when it comes up for hearing. Since the matter is of the year 1995 and as there is urgency, I direct the registry to post this appeal for hearing on 25.5.2007 before the appropriate court for consideration and disposal. The review petition is allowed accordingly.

M.N. KRISHNAN
(JUDGE)

mt/-

M.N.KRISHNAN, J.

R.P.No.837 OF 2006
in
S.A.No. 819 OF 1995

Dt. APRIL 9, 2007

ORDER